

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

**In Re: HERBERT G. ROGERS, III**

**CHAPTER 7  
NO: 11-15431 JDW**

**APPLICATION TO EMPLOY COUNSEL**

**COMES NOW** the Debtor, Herbert G. Rogers III, by and through counsel of record and files this his Application to Employ Counsel in an adversarial claim/lawsuit against Merchants & Farmers Bank. In support thereof, Debtor by and through counsel states as follows, to-wit:

1.

Smith Whaley PLLC, by and through Justin S. Cluck, was retained by Debtor to pursue an adversarial claim/lawsuit against Merchants & Farmers Bank.

2.

An adversarial lawsuit was filed against Merchants & Farmers Bank in the case styled Herbert Rogers v. Merchant & Farmers Bank, Adversarial No. 11-01250-DWH.

3.

At the time of filing of the adversarial proceeding the debtor was represented in the bankruptcy by Robert Gambrell, attorney-at-law, who continues to represent the debtor in this bankruptcy proceeding.

4.

There was no Order approving employment of Smith Whaley PLLC entered prior to the initiation of the adversarial proceeding because undersigned counsel was unaware that such an order might be required. Regardless of whether an order employing counsel was entered the adversarial proceeding materially benefited the Bankruptcy Estate of Herbert Rogers.

5.

Smith Whaley PLLC, by and through Justin S. Cluck, and Herbert G. Rogers III entered into a contract for legal representation pertaining to the adversarial proceeding which specified that the law firm would bill for its' services at an hourly rate of \$200.00 per hour in addition to reimbursement of reasonable and necessary expenses for services rendered in pursuing the Debtors' adversarial cause of action. A copy of the contract which establishes the agreement is attached as Exhibit "A".

6.

Smith Whaley PLLC, by and through Justin S. Cluck, were and are qualified and competent practicing attorneys and attached hereto as Exhibit "B" is the Affidavit of Attorney Justin S. Cluck.

7.

Smith Whaley PLLC, by and through Justin S. Cluck, represents no interest adverse to the estate and their employment was in the best interest of the estate.

**WHEREFORE**, the Debtor by and through counsel of record request that, after due notice is given to all creditors and parties-in-interest, this Honorable Court enter an Order retroactively employing Smith Whaley and/or ratifying the employment of Smith Whaley PLLC for the purposes of the adversarial litigation against M & F Bank. Debtor further requests the Court grant any other relief as the Court may deem just and proper.

**RESPECTFULLY SUBMITTED**, on this the 8<sup>th</sup> day of December, 2015.

**HERBERT G. ROGERS III,**

**By: /s/ Justin S. Cluck**  
**JUSTIN S. CLUCK, MSB# 100733**

**SMITH WHALEY, PLLC  
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**CERTIFICATE OF SERVICE**

This is to certify that I, Justin S. Cluck, attorney for the Debtor, do hereby certify that I have sent the foregoing to all ECF participants of record

**SO CERTIFIED**, this the 8<sup>th</sup> day of December, 2015.

*/s/ Justin S. Cluck*  
**JUSTIN S. CLUCK**